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CURRENT TOPICS

Hilary Law Sittings

THE Hilary Law Sittings began on Friday. The total number of appeals to the Court of Appeal is 108, compared with 106 for the corresponding term last year. Final appeals number 100, of which ten are from the Chancery Division, forty-one from the King's Bench Division, including eleven in the Revenue Paper, eight from the Probate and Divorce Division, one from the Admiralty Division, thirty-nine from county courts, including eleven in workmen's compensation cases, and one from the County Palatine Court of Lancaster. In the Chancery Division there are sixteen witness and twenty-five non-witness actions, which, with twenty-four retained and other matters, bring the total causes and matters for hearing to sixty-five, a decrease of twenty compared with a year ago. Mr. Justice VAISEY will take fifty-six companies matters. The appeals to the Divisional Court total 109 (114 last year), a decrease of five. In the Divisional Court list itself there are forty-eight appeals (forty-five last year); in the Revenue Paper thirty-one (fifty-two last year); and in the Special Paper, eight (five last year). There are two motions for judgment; eight appeals under the Housing Acts, 1925 to 1936; eleven under the Pensions Appeal Tribunals Act, 1943; and one appeal under the Public Works Facilities Act, 1930. The total number of actions set down for hearing in the King's Bench Division is 487. In the long non-jury list there are 201 actions, and in the short non-jury list 274, compared with 123 and 171 respectively last year. Three cases have been entered in the Commercial list, and there are nine short causes. Four Admiralty actions have been set down for trial. The total number of matrimonial suits awaiting trial in the Divorce Division is 3,416, compared with 2,992 a year ago. There are 2,503 undefended and 768 defended causes and 145 part-heard petitions.

The National Gallery

A COMMENDATION which we have little doubt will bear good fruit appears in the December issue of the *Law Society's Gazette*. It relates to the exhibition at the National Gallery which celebrates the work of the National Art Collections Fund. Sir Robert Clermont Witt, a practising solicitor, admitted in 1898, and senior partner in the firm of Stephenson, Harwood & Tatham, of 16 Old Broad Street, E.C., is largely responsible for the success of the fund, of which he was honorary secretary from 1903 till 1920, chairman from 1920 until now, and soon to be President. Sir Robert Witt is a private collector and is also well known as a former trustee of the National Gallery and of the Tate Gallery. Readers of the *New Statesman* will recall his delightful literary contributions to its weekly competitions. He also contributes verses, articles and reviews to other periodicals. His work also includes books on "How to look at Pictures," "100 Master-

pieces of Painting" and "The Nation and its Art Treasures." The National Art Collectors' Fund has saved for the nation, as the *Law Society's Gazette* points out, such masterpieces as the "Rokeby Venus" of Velasquez, Holbein's "Duchess of Milan," Titian's "The Vendramin Family," and the Luttrell Psalter. It is interesting to recall that Sir Robert is also a Doctor of Letters and a Hon. Fellow of New College, Oxford. He received the C.B.E. in 1918 and was knighted in 1922. He served in the Matabele war in 1896 and acted as a war correspondent with Cecil Rhodes.

Workmen's Compensation: Legal Representation

THE only doubt that may be felt about the Bar Council's reported attitude towards the exclusion of legal representation before the new workmen's compensation tribunals to be set up under the National Insurance (Industrial Injuries) Bill, is as to whether it has been expressed with sufficient emphasis. The annual general meeting of the Bar, which is to be held on 18th January, is to consider a report adopted by the Bar Council, that it is of the highest importance that a workman who is making a claim for compensation for an industrial injury shall be enabled to retain a legal advocate of his own choice. As regards claims for compensation, the Bill provides that certain claims shall be determined by an insurance officer in the first instance (cl. 43), and in cases of difficulty on appeal by a local appeal tribunal and then on appeal by a commissioner or a tribunal of three commissioners appointed under the Bill. The report states that a trade unionist will be able to command the services of a trade union official, who will in most cases probably be familiar with the various questions to be decided and will be practised in expressing himself in suitable terms. But a non-unionist who desires to make a claim under the Act will either have to speak for himself or else secure the services of a friend who is not a lawyer. This state of things, says the report, will tend to bring into existence a class of semi-professional "friends" who will make a trade of appearing before the tribunals set up by the Act, but who will not be subject to any of the rules of conduct or etiquette which are binding on both branches of the legal profession. The Bar Council recommends that the right of appearance by solicitors and counsel should be definitely recognised in the regulations. The tendency to exclude solicitors and counsel seems to be a strange aberration, and a singularly inept wastage of a fund of expert knowledge of the principles of workmen's compensation. The mistake probably arises from a too religious an acceptance of everything in Sir William Beveridge's report. In fact, lawyers have done much by way of settling claims, to take workmen's compensation outside the realm of litigation. All courts welcome the assistance afforded by lawyers. The Industrial Injuries Bill provides a strange exception.

Canadian Forces: Affiliation Proceedings

At the end of a Commons debate on 19th December, the Under-Secretary for the Dominions dealt with every aspect which members had discussed of the problem of affiliation applications and orders in favour of girls in this country against Canadian soldiers who had returned home. Briefly the points made by members were: The Ministries of Defence in the Dominions should refuse to grant demobilisation credits in money and kind to any Dominion ex-service man who has had a British affiliation order made against him unless he gives satisfactory assurances of his willingness to pay the money to the girl whom he has betrayed; and the British High Commissioner should be instructed to institute proceedings on behalf of any British woman who has failed to obtain money which is due to her under an affiliation order made in this country (Earl Winterton). A distinction must be made between cases in which orders have been made and those in which no orders have been made. In the latter case as a matter of justice the girl must be brought forward for cross-examination (Lt.-Cmdr. Gurney Braithwaite and Major Sir Frank Soskice, Solicitor-General). The law as to the necessity for corroboration makes it inevitable that in a large number of cases it is quite impossible for mothers to prove their cases (Capt. Blackburn). Some sort of international arrangement ought to be made to cover these cases (Mrs. Braddock). The Under-Secretary for the Dominions (Mr. Parker) agreed with the necessity for cross-examination in contested cases and said that it was impracticable to devise any workable scheme which would allow of a woman in this country taking proceedings in a court here against a man in Canada, or taking proceedings in a Canadian court, without herself appearing before that court. The Canadian military authorities had, however, been very willing in cases where a woman contemplated such proceedings to delay the transfer of the soldier concerned overseas, so that proceedings could be taken in this country while both parties were here. Where an order had been made, Mr. Parker said, and so long as the putative father was a member of the Canadian forces, the Canadian military authorities deducted an appropriate amount from his pay in respect of the order. But by Canadian law a gratuity could not be withheld or reduced in payment of a debt or any other claim. Canada had not yet adopted the scheme of the Maintenance Orders (Facilities for Enforcement) Act, 1920, and if it did, the question of extending the Act to affiliation orders would have to be considered. This might be a long-term solution, but would not meet present difficulties. Legislation in Canada would also be required to enable the United Kingdom High Commissioner to take proceedings. Mr. Parker could not say more, for the present, than that the Dominions Office were examining the matter with the Canadian authorities and they would do their very best to see what action could be taken to deal with the whole question.

Plain English

SIR ALAN HERBERT, M.P., a member of the bar as well as on the staff of *Punch*, has long been a doughty fighter for plain English against journalese, "officialese" and legal jargon. Practising lawyers, weary of the periphrastic language of modern statutes, are thankful that there is at least one member of the present Parliament who will fight for simplicity in the drafting of our laws. In the *Sunday Times*, of 23rd December, Sir Alan Herbert drew attention to the work of two other men who have fought and won a great battle of words, Mr. ESCOTT REID and Professor K. H. BAILEY, representatives of Canada and Australia respectively on the Drafting Committee of the United Nations. In a memorandum submitted by Mr. Escott Reid to the Drafting Committee, on 11th December, 1945, he asked: "Suppose the Security Council decides to take military enforcement measures under Art. 42. Is it to do so in a resolution starting with 'considering' and going on to 'noting,' 'realising,' 'taking into account,' 'believing' and 'agreeing'?" Or is it to embody its grave decision in simple, crisp, forceful language appropriate to the gravity of that decision—the kind of language in which Mr. CHURCHILL

announced the decision of the British Government after Dunkirk, in which MARSHAL STALIN announced the Soviet Union's reply to the German attack in June, 1941, or in which Mr. ROOSEVELT asked Congress to declare a state of war after Pearl Harbour?" As a result an important report was amended, and it was presented by Professor Bailey and welcomed by all the delegates. True, as Sir Alan said, this is only a first shot in a fine campaign, but it is a shot of tremendous effect, for it establishes an important precedent, which most people would like to see followed in national as well as international matters. The obstacles to this were well put by Sir Alan: "Life and law are so complicated to-day that the most passionate advocate of simplicity must feel a sneaking sympathy with the Parliamentary draftsman who has the impossible job of putting confusion into plain language. Again, wherever there is a dispute, wherever there is compromise, any attempt to put things plainly may raise fears and suspicions on the other side. Men may accept gladly a string of woolly words, but bristle and bridle if they are offered a few plain ones." Knowledge of the nature of the obstacles is a first step towards overcoming them.

Land and Housing

THE Minister of Town and Country Planning, Mr. LEWIS SILKIN, gave an interesting account of Government long and short term policy in connection with land and houses to the Fabian Society on 6th December. After speaking of "combined operations" and greater co-ordination between departments, the Minister said, with regard to speeding up the selection of housing sites, that up to the 31st October, 1945, sites had been approved sufficient for about 679,000 permanent houses and 114,000 temporary houses. With regard to compensation and betterment the Minister stated that full nationalisation was not an immediate possibility, nor, indeed, had the Government any mandate for it in the present programme, but some modification was imperative for planning. In effect the Uthwatt Committee said: At present the rights attaching to land ownership are assumed to include (with certain relatively small exceptions) the right to use the land so as to make a maximum profit, irrespective of the needs of the community. If the community said to a particular owner that he must use his land in some way that will produce less in the way of ground rent or land value, then the present law said he must get compensation for his loss, and the report showed that owners as a class got far more in compensation than their real loss and might even get compensation for the same loss over and over again. The ratepayer or taxpayer kept on paying out. The landowners kept on cashing in. If building was prohibited on one area it found an outlet somewhere else, and other landowners benefited by reaping a development value that might only have arisen because of the restriction elsewhere. The restricted owners got their compensation; the other owners reap the benefit (betterment). The community, in one form or another, paid twice, or even over and over again, but no process had yet been devised for finding the men who get the benefit and taxing them to help pay the compensation to the others. Mr. Silkin said that as a first step towards planning, we must solve the compensation-betterment deadlock, and take "unearned increment" for public funds. The desirability of taxing unearned increment rather than earned increment cannot be doubted in principle, but in practice experience seems to show that the Government has set itself an arduous and complicated task in seeking to tax increased land values virtually out of existence.

Recent Decision

In the Court of Appeal on 21st December (*The Times*, 27th December), DU PARCQ and TUCKER, L.JJ., held that where a petitioning wife in a divorce suit obtained the custody of a child of over sixteen years of age, owing to special circumstances existing at the date of the order, the order should no longer remain in force when those special circumstances ceased to exist, and it could be set aside.

INCOME TAX AND THE DEMOBILISED SOLICITOR

SOME CONCESSIONS AND PROBLEMS

It is apparent that many solicitors released or about to be released from the Armed Forces or other form of National Service have misgivings about their income tax position. In particular, many want to know what is the effect of promotions in the last year or so before leaving the service on their liability for tax, and how they stand on the change over from the service system of assessment to the Pay-as-you-earn system when they return to civil employment. These problems are, of course, common to all persons returning to civil life and solicitors may be called upon to advise their clients, so it is proposed to deal with the matter generally and, also, to consider certain aspects which are of particular concern to solicitors. The subject can be treated conveniently under the following separate headings.

(1) *The Basis of Assessment.*—Undoubtedly, in the absence of some special modification, the fact that service emoluments are assessable still on the preceding year basis, and are not within the P.A.Y.E. scheme, the time lag in the provisional deductions of tax from pay made by the service paymasters, and the operation of the cessation rules of income tax law would produce many hard cases. Fortunately, special provision has been made with the result that, in the majority of cases, the switch from war to peace will be brought about smoothly and ex-service people need not worry so far as income tax is concerned. The special rules and practice are to be found in "A List of Extra-Statutory War-time Concessions given in the Administration of Inland Revenue Duties, 1944," published by H.M.S.O. (Cmd. 6559). This list was noted and explained in (1944), SOL. J., p. 363, 371. Apart from its provision of the answers to some of the problems now under discussion, it contains most useful and important information on many other topical matters of income tax, excess profits tax, national defence contribution, death duties and stamp duties. It should be possessed and studied by all concerned with revenue matters. Paragraph 3 deals with the income tax of members of the Forces.

The normal cessation rules provide that when a source of income is determined in any year of assessment, the assessment for the period from the previous 6th April to the date of the determination shall be on the basis of the actual profits for such period. The Revenue can raise an additional assessment on the taxpayer for the penultimate year if his actual income for that year was in excess of the assessed income for the same year. The effect of promotions during these periods on tax liability is obvious under the normal rules, but they have been modified for members of the Forces by the above-mentioned concessions, and the results are as follows. No additional assessment on service pay will be made for the penultimate year of service, whether determined by death or demobilisation. Where service has been determined in this manner and the assessment for the final year of service would have been based on the preceding year's pay if it had not been determined, then tax will be computed on a part of the preceding year's pay proportionate to the period served in the final year, if that part is less than the actual pay for the period. This concession has effect from the year 1944-45.

Where a member of the Forces has died on active service during the war, it is stated that no action is taken to recover any tax outstanding in respect of service pay, except in cases where pay is in hand to cover the amount payable.

The fact of absence abroad does not absolve from liability, as it is provided that, where a member of the Forces is paid from U.K. Government funds, he is liable to income tax on service pay irrespective of where he lived before joining up and whether he is serving in the U.K. or abroad, but there is an abatement in certain cases for Dominion and Colonial personnel, as a result of which the charge of income tax is not to exceed the amount for which they would be charged under the appropriate Dominion or Colonial system of taxation. The question of non-residence may, of course, affect tax liability on other sources of income. With regard to

ex-prisoners of war, it has been announced that their position, so far as tax on service pay is concerned, is the same as for other members of the Forces.

(2) *P.A.Y.E. System.*—From the above remarks, it will be seen that normally no difficulty should be experienced when the serviceman takes up employment in civil life and comes within the scope of P.A.Y.E. for the first time. In the absence of a code number, the new employer will use the emergency card procedure. This means that the tax deductible from the first payment of wages is the tax which would be due if the wage-earner were a single man with no dependants. It will be continued on this basis until the correct code number has been worked out and notified to the employer. Obviously for the married man the sooner he gets his code number fixed the better, so that the deductions from his pay may then take into full account all the allowances to which he is entitled. The employer must notify the local H.M. Inspector of Taxes that he has taken on a new employee hitherto not subject to P.A.Y.E. The employee will be asked to give particulars of any return already made or, alternatively, to complete a new return. These matters must be given prompt attention to enable the correct code number to be ascertained without delay and notified to the employer on a tax deduction card which will be used for subsequent tax deductions. *En passant*, it may be mentioned that the comparison between the amount of tax deducted as shown on the service pay slip and the amount deducted from civilian pay will be striking in some cases, but it must be remembered that, in general, all the allowances paid to members of the Forces, marriage allowances, lodging allowances, family allowances and allowances in respect of children are exempted from tax.

(3) *Expenses.*—In connection with the expenses allowed under r. 9 of Sched. E as deductions from assessable income, two points of topical interest are worth noting. The compulsory contributions to the compensation fund instituted under the Solicitors Act, 1941 are allowed as deductions. Solicitors and their clerks attending refresher and similar courses may wonder how they stand in relation to the attendance fees and other expenses incurred therewith. The prospect of relief does not seem hopeful. It is quite clear that expenses incurred in order to obtain employment are not deductible. This is illustrated by the recent case of *Henderson Shortt v. McGillorm (Inspector of Taxes)* [1945] 1 All E.R. 391, in which a fee based on a percentage of the first year's salary payable to an employment agency through which the job had been obtained was disallowed. In the case of those who are already in employment when they enter for such courses, reference may be made to *Simpson v. Tate* [1925] 2 K.B. 214, in which a county medical officer was held not to be entitled to deduct his subscriptions to various societies which he had joined in order to avail himself of their facilities to keep up to date in his knowledge. As Rowlatt, J., pointed out: "He qualified himself for his office before he was appointed to it, and he has very properly endeavoured to continue qualified by joining certain professional and scientific societies, so that by attending their meetings keep abreast of the highest developments and knowledge of the day." The learned judge continued: "He incurs these expenses in qualifying himself for continuing to hold his office just as before being appointed to the office he qualified himself for obtaining it. In my view the principle is that the holder of a public office is not entitled to deduct expenses which he incurs for the purpose of keeping himself fit for performing the duties of office . . ." This seems a hard case and although it involved a public appointment, seems equally applicable to the case of ordinary employment. So far as travelling expenses are concerned, it was held recently in the Revenue Court that an employee was not entitled to deduct expenses incurred in travelling to a Polytechnic for evening classes although it was a condition of his employment

that he should attend such classes (*Blackwell (Inspector of Taxes v. Mills* (1945), 38 Rating & I.T. 378).

(4) *Pensions*.—Exemption from tax is given for wounds and disability pensions (Finance Act, 1919, s. 16). Allowances granted to war widows in respect of their children are also exempt from tax (Finance Act, 1922, s. 27). Pensions granted to war widows in their own right are not exempt from tax. The difference in treatment of such pensions has provoked some discussion recently in Parliament, but it seems clear from the answers to members' questions given by the Chancellor that no alteration in the law is contemplated.

(5) *Gratuities*.—Provision is made in the present Finance Bill for the exemption from tax of war gratuities.

(6) *Post-War Credits*.—The sums payable in respect of the special post-war credit which was instituted in 1942 for

members of the armed and auxiliary forces of the Crown serving in the ranks are exempt from tax (Finance Act, 1943, s. 19). These post-war credits have no connection with the post-war income tax credits introduced by the Finance Act, 1941, by way of compensation for the reduction of reliefs and allowances and which are to be paid at some future date. The latter type of post-war credit being itself a refund of tax will not be subject to further tax when actually paid. There is no distinction in treatment between the civilian and ex-service taxpayer in respect of post-war income tax credits. Although the difference between the two types of credit seems quite apparent, it has been thought worth while to emphasise the point because some service people are known to have been confused about it and may have miscalculated their immediate financial position in this respect.

COMPANY LAW AND PRACTICE

COHEN REPORT XIII—ARRANGEMENTS AND WINDING UP

ON the subject of schemes of arrangement under s. 153, the committee thought that two improvements might be effected. They included a recommendation in the report that any notices sent out by a company under that section should be accompanied by a statement of the interests of the directors, and, if debentures were proposed to be affected, then a statement of the interests of the trustees for the debenture-holders. The other matter which they thought was a matter of procedure, and not one requiring statutory interference, was that the court should be informed whether the necessary majority at a class meeting had been obtained only by the votes of members of the class, whose interest as holders of shares of another class, or as creditors, outweighed their interests as members of the class. It was presumably thought that the court should require evidence on the nature of the various interests of the people voting at a meeting of a class. This of course would take a great deal of discovering and involve the expenditure of a considerable amount of time and money, and I think that it is unlikely that it would ever become the general practice in all cases. It might possibly be resorted to in cases where those opposing the scheme made allegations that the majority of a class was composed of people not really interested in the welfare of that class. The note in Buckley describing the function of the court when considering a scheme under this section is as follows: "The court does not sit merely to see that the majority are acting *bona fide* and thereupon to register the decision of the meeting, but at the same time the court will be slow to differ from the meeting unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme." It will be interesting to see if any change in the procedure is introduced as the result of this remark in the report.

Two recommendations were made relating to the power to acquire the shares of minorities under s. 155. That section provides that where a scheme involves the transfer of shares in a company to another company and the scheme has been approved by holders of 90 per cent. of the shares affected the transferee company may, subject to certain conditions, acquire the shares of any dissenting shareholders on the same terms as those on which the other shares are acquired. The report suggests that a similar power of acquisition should be given where the transferee company already holds more than 10 per cent. of the shares proposed to be transferred, but that it should do so only where the proposal is made to all the holders of the company other than the proposed transferee company, and is accepted by at least 75 per cent. of those holders holding between them not less than 90 per cent. in value of the shares. The other suggestion is that it is unreasonable for the transferee company to have the power to acquire the shares of dissentients and that, if they do not choose to exercise it, the dissentient members cannot compel them to do so, though their position as a

minority in the company may be most unsatisfactory. It is therefore suggested that the dissentient shareholders should be able to compel the transferee company to buy their shares.

When considering the question of winding up, the committee apparently were told by some of the witnesses that the provision for directors to make a declaration of solvency so that the members should retain control of the winding up had been considerably abused. They thought that this was an exaggeration. From the 1st July, 1938, to the 31st October, 1939, 1,846 members' voluntary liquidations were completed, and in only sixty-eight cases were the creditors not paid in full. The report does however point out that, in certain cases, it does not say how many, the creditors applied for and obtained a compulsory order after the declaration of solvency had been made. In those cases, it says, the declaration was probably not justified. The committee recommended the retention of the provision, but thought that it should be altered. It must, it is suggested, be made within thirty-five days of the resolution to wind up, and should be accompanied by a statement of affairs in a prescribed form. Further the liquidator, if he thinks that the declaration is unlikely to turn out to be right, should call a meeting of the creditors, and he should also do that after the winding up has been going on for a year if they have not been paid by then. The report points out how difficult it is to obtain a conviction against directors who make declarations of solvency which turn out wrong, as it is necessary to prove that they did not form an opinion that the company would be able to pay its debts within a year. It is therefore suggested that in cases where the creditors have not been paid within the time specified in the declaration the onus should be placed on the directors of showing that they had reasonable grounds for their opinion and that if they fail to do this they should be convicted of an offence.

With regard to fraudulent preference, which in the case of companies is dealt with by reference to the Bankruptcy Act, the committee appeared to be slightly nervous in making recommendations lest they should exceed their terms of reference. They thought that it would be desirable to extend the time during which a transaction may be impeached from three months before the liquidation to six months and they also decided to recommend that, if it could be established that payments into banks within the period were made with the object of fraudulently preferring a surety, then, if the money was ordered to be repaid by the bank, the bank should retain its rights against the surety in respect of the sums which it had been ordered to return. Similarly, with regard to the avoidance of floating charges under s. 266, the report recommends that the period of twelve months should be substituted for six months.

There are a number of other matters connected with winding up with which the report deals and I will deal briefly with these, except for the suggestions relating to prosecutions which I will discuss next week. Section 275 (1) enables the

court to declare that any directors of the company, past or present, who had been knowingly parties to any frauds, where the business of the company has been carried on for a fraudulent purpose, shall be personally liable for the debts of the company and also liable to imprisonment for a year. It is recommended that the maximum period of imprisonment should be increased to two years and that the provision should not be limited to directors, but should be extended to all persons knowingly parties to the frauds. From this recommendation it appears that the committee thought the provision had been of some use, but it would have been interesting if the report had shown in how many cases it had been shown to the satisfaction of the court that the business of a company had been carried on for any fraudulent purpose. There are also suggestions that the court should be empowered to disqualify from being a director an officer who commits a misdemeanour or who is convicted of an offence in connection with companies.

The differentiation between clerks or servants and workmen or labourers as regards their rights as preferential creditors was thought to be unsatisfactory, and three suggestions were made with a view to strengthening or clarifying the position of certain offences, viz., it should be made clear that failure

to account for any moneys received by officers of a company in liquidation is an offence; it should be made clear that it is an offence to pay or offer an inducement to anyone to vote for any particular liquidator; and also that failure to keep proper books is an offence under s. 274 even where a company is wound up within two years of its incorporation.

One of the matters complained of in evidence before the committee was that voluntary liquidation had been used to repay high-yielding preference shares at less than market prices, but they considered that this abuse was rare and refused to approve of any of the complicated suggestions for preventing it being done. A matter which, if I had had sufficient space I should have referred to last week, is connected with the rights of the holders of a class of shares. Section 61 provides that where the rights attached to any class of shares are varied by the consent or resolution of the holders of those shares the holders of not less than 15 per cent. of those shares who did not assent can apply within seven days to have the variation cancelled. In accordance with the general policy adopted by the report of giving more time for members of companies to assert their rights, it is suggested that the period in which this application must be made should be extended to twenty-one days.

A CONVEYANCER'S DIARY

1945—CHANCERY—II

APART from *Re Wakeman* [1945] Ch. 177; 89 SOL. J. 165, a few cases about wills and trusts deserve passing notice. In *Re Marshall* [1945] Ch. 217; 89 SOL. J. 142, the Official Solicitor was appointed judicial trustee of a certain settlement for the purposes of the Settled Land Act. This appointment was made by Cohen, J., under the Judicial Trustees Act, 1896. In the current edition of Underhill on Trusts, at p. 449, the learned author stated that he had never had a single case in which the appointment of a judicial trustee was even suggested. In a much more limited experience, I can say the same. I suppose that the object of having a judicial trustee as Settled Land Act trustee in *Re Marshall* was to enable charges to be made for the services of the judicial trustee in a case where there might have been difficulty in finding someone to do the work; but that is not stated in the report. The point on which the decision is reported is that the learned judge held that a judicial trustee might be appointed for the purposes of the Settled Land Act as much as for any other purposes. I doubt whether *Re Marshall* portends any wider use of the facilities afforded by the Judicial Trustees Act, 1896. *Re Palmer* [1945] Ch. 8; (1944), 88 SOL. J. 398, provides an example of the strict interpretation of provisions in wills. The testatrix by her will bequeathed all "such stocks, shares, money and things as shall at my death be standing in my name or at my disposal and be in the care, custody or possession of" a certain bank. At the date of the will nothing appears precisely to have come within this description, but dividend mandates had been given by the testatrix for the payment into the named bank of the dividends on certain stocks. For the purposes of argument it was assumed that the stocks in question fell within the designation in the will, though the point was certainly open to doubt. However, shortly after the date of the will, a receiver was appointed in respect of testatrix's affairs under the Lunacy Act, 1890, and an order was made under the Act directing that the two stocks in question should be transferred into court. It was held by the Court of Appeal that, even assuming that the stocks in question were originally within the words of the bequest, their transfer into court, where they remained until the death of the testatrix, operated to prevent their passing under the bequest. Lord Greene, M.R., referred to certain provisions of the Lunacy Act, 1922, under which it had been argued that the master is empowered to make orders to preserve the *status quo* in such a case as this. The Master of the Rolls said that if the master had such a power "he should be very careful to see what possible interests

may stand to be affected." The order in this case appears to have been made as a matter of ordinary routine. The unfortunate result, so far as the legatees were concerned, does suggest that the parties concerned in proceedings under the Lunacy Acts ought to be very careful to ensure that routine orders are not made where they would be unjust in their consequences.

Re Bailey [1945] Ch. 192; 89 SOL. J. 130, was a decision of Romer, J., upon a home-made will under which a certain person was named "as my residuary legatee." Another person was made devisee of the house in which the testatrix had lived. The testatrix left personal estate worth rather less than £300 and residuary realty worth about £3,500. As a matter of construction the learned judge held that in this particular will the "residuary legatee" was also residuary devisee. It does not follow that a similar decision would be come to in all cases. Although *Perrin v. Morgan* was cited, there is a distinction between the class of case where the words are technical words (such as "residuary legatee") and that in which the word causing difficulty is a word without any particular technical significance (such as "money"). It is clearly much less easy to give to the technical words a meaning different from their technical meaning than it is to stretch the signification of a non-technical word. My impression is therefore that the residuary legatee in *Re Bailey* was rather fortunate, and that others may well not share her good fortune.

In *Re Alcock* [1945] Ch. 264; 89 SOL. J. 246, there was a gift of residue "to be divided equally between my nephew A and the three children of my cousin who resides at (a certain address) absolutely." The cousin did in fact have four children and the word "three" was treated as being a clerical error. The real point in the case was whether the nephew was to take half the estate and the four children of the cousin to take the other half as joint tenants, or whether all five were to share equally. It was argued that etymologically the word "between" required, *prima facie*, division into two. Evershed, J., despite a considerable conflict in the earlier authorities, followed the opinion of Maugham, J., in *Re Cossentine* [1933] Ch. 119, which was to the effect that at this stage of the twentieth century the word "between" in such a case merely means "among." All five beneficiaries therefore shared equally.

I have already called attention in the "Diary" of 3rd November, 1945, to *Re Feather* [1945] Ch. 343; 89 SOL. J. 235, the decision about a gift to a legatee "if still in my

service at the date of my death." More will no doubt be heard of this subject.

In *Re Fry* [1945] Ch. 348; 89 Sol. J. 349, property was given to one for life with remainder in fee simple, in the events which happened, to the daughter of the tenant for life. The testator provided that it should be a condition of the taking of the absolute interest that "the person so taking shall take and continue to bear my surname." Vaisey, J., held that this condition was a condition subsequent and that it was void for a number of reasons. First, it was void on the ground of repugnancy to the antecedent absolute gift. Second, it was void as infringing the rule against perpetuities, or rather, it would, if coming into operation at all, necessarily involve an infringement of the rule, since the person who actually took was not a life in being at the testator's death and the attempted obligation to bear the surname was one not admitting of any intermission during the whole of that person's life. Again, although a "name clause," or a "name and arms clause" is well recognised, and, when applied to a man, is no more than irksome, there were few circumstances in which it could with propriety be applied to a woman. Doubtless many women, both married and unmarried, make use of pen names and theatre names, and there was nothing, so far as the learned judge knew, to compel a married woman to take her husband's surname, so that the wife of Mr. Robinson may, speaking generally, call herself Mrs. Smith if she chooses to do so. None the less, the use of different surnames by a man and his wife could not fail to be productive of many embarrassments and inconveniences, not only to themselves, their

children and relatives, but to their friends and acquaintances, and indeed to society generally. In the case before him the husband of the lady concerned was, though reluctantly, prepared to change his surname, if his wife had to change hers, but it did not follow "that every husband, still less every prospective husband, could be expected to be equally accommodating and sensible." The clause might therefore even be a clause in restraint of marriage, and void on that ground, although the learned judge expressed no opinion upon that matter. He held, accordingly, that the clause was wholly void and inoperative, and that, since it created a condition subsequent, the beneficiary took free of it.

Re Shelton [1945] Ch. 158; 89 Sol. J. 152, is a curious case; certain property was settled on the same trusts, or as nearly corresponding thereto as circumstances would admit, as certain other property. The latter property had been settled on a certain person in tail. He executed a disentailing deed whose effect was to create only a base fee. Later, the base fee had become enlarged into a fee simple. The question arose whether the first-named property could be settled referentially for an interest corresponding to a base fee. The issue depended on whether a base fee can be directly created or whether it can only come into being in consequence of a disentailing deed made without the consent required by the Fines and Recoveries Act. In the reserved judgment Vaisey, J., held that effect must be given to the referential trusts. As a discussion of pure law the case is of interest, but the circumstances are scarcely like to recur.

LANDLORD AND TENANT NOTEBOOK

ACQUIESCENCE IN BREACH OF COVENANT

I ALLUDED, when discussing the dissenting judgment of du Parcq, L.J., in *Norman v. Simpson* (1945), 62 T.L.R. 113 (C.A.), in last week's "Notebook" (90 Sol. J. 5), to the possibility of a right to damages for breach of covenant being lost by the covenantee's acquiescence. I did not, of course, suggest that in that case the right to damages had been extinguished, as had the right to take advantage of the proviso for re-entry. The acquiescence fell short of anything reported to have had that effect; but it was acquiescence in a breach of covenant against sub-letting, and is of more than forensic interest: for it is conduct of this kind which has been largely responsible for the creation of slums.

Distinction should be drawn not only between forfeiture cases, when a condition is broken and the breach waived, and cases of claims for damages: there is a third category, cases in which equity has refused injunctions in circumstances in which law might not have refused damages. Such was *Bedford (Duke) v. British Museum Trustees* (1822), 2 My. & K. 552: a landlord had so altered the character of surrounding property that the restriction in a tenant's covenant as to user "ceased to be applicable according to the intent and spirit of the contract," and the court left the parties to law. In *Sayers v. Collyer* (1882), 28 Ch. D. 103, C.A., a building estate case, the plaintiff objected to the purchaser of one of the houses using the premises as a beer-shop; when it appeared that he had himself been a customer, if not a "regular customer," it was held that he had lost his right both to an injunction and to damages; but Fry, L.J., made it clear in his judgment that "an amount of acquiescence less than what would be a bar to all remedy may operate on the discretion of the court and induce it to give damages instead of an injunction." Thus a court of conscience, as might be expected, will leave it to a court of law to support Satan in reproving sin.

Coming now to the question what "amount of acquiescence" will bar all remedy, one of the older authorities is *Gibson v. Doeg* (1857), 2 H. & N. 615. The facts here were that the plaintiff bought the reversion to property held under a lease which prohibited the tenant from carrying on business on the premises, from converting the dwelling-houses into a shop, or suffering them to be used for any other purpose than that of dwelling-houses. One of the houses had been converted into

a grocer's shop and public-house, and the plaintiff's predecessor had, knowing this fact, received rent for twenty years. The claim was for forfeiture, which was held to have been waived; but what is of interest is that the jury were told that they might infer the grant of a licence—which would extinguish the remedy in damages.

It will be observed that the principle applied was not so much that of refusing to assist those who "sleep on" their rights as that of shifting the onus of proof of such rights. For Pollock, C.B., expressed the view of the court in these terms: "... where a breach of covenant has continued for upwards of twenty years, and, with full knowledge of it, rent has been from time to time received, that fact may be left to the jury to say whether they will not *presume a licence*. It would be strange if a jury might presume a grant from upwards of twenty years' user, and yet be not at liberty to presume a licence. It is a maxim of the law of England to give effect to everything which appears to have been established for a considerable course of time, and to presume that what has been done was done of right, and not in wrong... It might be said that a right has grown out of proceedings which are wrongful... but, in truth, it is nothing more than giving effect to notorious and avowed acquiescence."

Some of the above propositions may seem a little far-fetched, and, in particular when a later passage is reached, "it is not necessary, in point of form, to send the case to a jury to find the facts which the judge may tell them to presume," misgiving may be felt about the propriety of such a proceeding. For the analogy between grant and licence is open to this criticism: in the case of the licence it is something called for by a contract entered into by the person alleged to be in default.

However, the principle has been applied more recently: in *Hepworth v. Pickles* [1900] 1 Ch. 108, Farwell, J., dismissed (but without costs) an action to rescind a contract for the purchase, by a grocer and brewer, of a grocery shop which had an off-licence, in these circumstances: the defendant's predecessor in title had bought the property in 1874, entering into a covenant limiting use to that of a private dwelling-house and specifically prohibiting the sale of intoxicants on the land or in any shop or building thereon; soon after, first beer and then spirits were sold there openly, the existence of a licence

being manifest from a statement in large letters over the door; the plaintiff's contract was made in 1898, and when the abstract was delivered he decided that the place was of no use to him. But the learned judge, declining to distinguish restrictions between leases from those in other conveyances, followed or applied *Gibson v. Doeg*: "if you find a long course of usage, such as in the present case twenty-four years, which is wholly inconsistent with the continuance of the covenant relied upon, the court *infers* some legal proceeding which has put an end to the covenant, in order to show that the usage has been and is now lawful and not wrongful."

"Legal" proceeding, in the above, is presumably not limited to litigious proceedings. And, as regards knowledge, while notoriety was stressed in this case, and "full" know-

ledge in *Gibson v. Doeg*, some authority for the proposition that means of knowledge will suffice will be found in *Wiltshire v. Coslett* (1889), 5 T.L.R. 410 (lime-burning carried on at the time of the demise; construction of covenant not to carry on noisome business affected).

There is, of course, no magic in the "twenty years" cited by Pollock, C.B.; but unfortunately the only case in which a contention of acquiescence has failed on the ground of insufficient duration appears to be one in which the period was very short indeed; namely, *Mitchell v. Steward* (1866), 14 W.R. 453, one of sub-letting in breach of covenant, the breach being "gradual and not conspicuous," and tolerated, perhaps, rather than acquiesced in by a few months' inaction.

TO-DAY AND YESTERDAY

January 7.—On 7th January, 1671, Nathan Danbarvin, who had been sixteen years a member of Gray's Inn, was allowed to be called to the Bar *ex gratia*. Having been for some years in the service of the Duke of York in Ireland, he had not been resident in the Society and had thereby been debarred from performing his moots. On the same day it was ordered that four members should be granted a building lease to pull down and re-build Finch's Buildings, previously Gerard's Buildings, erected by Sir Gilbert Gerard about 1629. These stood beside the Hall in Holborn Court, at about the place where the steps of the benchers' entrance were erected in the nineteenth century.

January 8.—Even when his health was finally failing, Sir Walter Scott continued to discharge his duties as sheriff-depute of Selkirkshire. On 8th January, 1831, he noted in his diary: "Have up two boys for shop-lifting—remained at Galashiels till four o'clock, and returned starved. Could work none and was idle all evening."

January 9.—Next day, 9th January, Scott noted: "Went over to Galashiels, and was busied the whole time till three o'clock about a petty thieving affair, and had before me a pair of gallows-birds, to whom I could say nothing for total want of proof, except, like the sapient Elbow 'Thou shalt continue there, know thou, thou shalt continue.' A little gallows-brood they were, and their fate will catch it. Sleepy, idle and exhausted on this."

January 10.—On 10th January, 1649, Serjeant John Bradshaw was chosen President of the High Court of Justice for the trial of King Charles I. He was the revolutionaries' obvious choice for a task which no man of weight in the profession would or could undertake. He was "not much known in Westminster Hall, though of good practice in his chambers and much employed by the factious." He did his work "with all the pride, impudence and superciliousness imaginable." A sword and mace were borne before him and he wore a scarlet robe and a bullet-proof hat. In Gray's Inn, where he was called to the Bar, Bradshaw had chambers in Finch's Buildings.

January 11.—On 11th January, 1662, Evelyn noted: "I received of Sir Peter Ball, the Queen's Attorney, a draught of an Act against the nuisance of the smoke of London, to be reformed by removing several trades which are the cause of it and endanger the health of the King and his people."

January 12.—On 12th January, 1769, at a meeting of some of the freeholders of Middlesex at the Mile End Assembly Room, certain instructions were agreed to and directed to be transmitted to John Wilkes and Serjeant John Glynn, the members of Parliament for the county. Among them were "to endeavour to continue to us and confirm our old constitutional and only rightful trial—by jury" and "to examine into the administration of justice in this country, particularly into the present state of the commission of the peace."

January 13.—On 13th January, 1615, the masque of *Ulysses and Circe* was presented in the Inner Temple Hall. It was the work of William Browne, who had long resided in the Inn. The first scene opened with the setting of a sea cliff on which were seated two sirens "their upper parts like women to the navel and the rest like a hen." The second scene opened in a wood on the hillocks of which were seated eight musicians. The third scene, in which the knights transformed into beasts were restored to human shape, was a pleasing walk with the rising sun at the end. They wore green doublets cut like oak leaves as upon cloth of silver, white silk stockings and green shoes with roses and silver leaves. The poetic charm of the performance filled

even the outer window sills with spectators who destroyed a chimney in their eagerness. Milton's *Comus* owes much to this masque.

THE TEMPLE TREES

The slaughter of the plane trees in the Temple has lately given just cause for alarm. True, one giant in Brick Court and another in Essex Court had been leaning so perilously that perhaps there was no remedy but the axe. But the thing has already gone beyond necessity. King's Bench Walk shows many mutilated stumps, and it is rumoured that the surviving plane tree in Essex Court, upright and harmless though it is, is to be murdered to make way for the encroachment of a temporary library, though it can hardly be an architectural impossibility for a temporary structure to be built round a permanent tree protruding through the roof. (I have myself seen it done.) Of late it seems to have been little realised how much the charm of any place, and of London in particular, depends upon matured trees and how unwise it is to let them be lightly destroyed. They are as essential to that charm as her hair to a beautiful woman. They may be clipped perhaps, but a "collaborationist crop" mars all. Years ago the felling of one of the trees in Hare Court left the workhouse prospect of the back of Dr. Johnson's Buildings nakedly visible in all their chill Victorian horror, an ever-present reminder of the more spacious, gracious and livable past and of those vanished chambers, roomy and commodious, that Charles Lamb occupied at No. 4, Inner Temple Lane, paying £30 a year rent. "The rooms are delicious and the best look backwards into Hare Court, where there is a pump always going . . . Hare Court trees come in at the window, so that it's like living in a garden."

PAST CARE

The Temple was formerly a place of trees, great and small, movable and immovable. In the garden, behind No. 3, King's Bench Walk, the site of the present Niblett Hall, were peach trees and all along the walks orange trees in tubs. It appears from a record in 1697-8 that the Temple orange trees were wont to spend a portion of the year in rural Islington for their health. The very names of Fig Tree Court and Elm Court and Vine Court, which is now the eastern end of Pump Court, speak of pleasant shades. The fig tree was no fiction. In February, 1515, a transaction between William Rudhale, afterwards serjeant-at-law, and his son John is thus recorded: "Johannes Rudhale assignatus est in cameram juxta ficum cum predicto Willielmo patre suo." In 1610 there is a record of a payment to the gardener for a fig tree, and as late as 1654 2s. 6d. is paid "to the joiner for mending the pales about the fig tree." The Templars have had a consistent care for their trees. In 1545 the gardener of the Inner Temple was dismissed for three prime offences: having the plague in his house, keeping ill rule and cutting down the trees. The seventeenth and eighteenth centuries saw rich varieties of trees in the gardens. In 1700 there are records in the accounts of payments for thirty elms, two standard laurels, six junipers, four hollies and two box trees. In 1703 fifteen yews were ordered for the garden, while chestnut, cherry, lime, nectarine, orange, peach and plum trees were all finding their way in about this period. The Middle Templars, too, were of the same mind, and in 1681, when the fountain, which now gives its name to Fountain Court, was made, the trees growing about it were left undisturbed and enclosed within its pallisadoes. That atmosphere must not be obliterated which a former librarian of the Middle Temple found

"where the fountain, as it falls and springs,

Brings to the vacant mind the memory
of streams and rills and woodland murmurings."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

Judicial Titles.

Sir,—In connection with your paragraph this week under "Current Topics" as to the correct title of judges, you refer to a recent happening at a county court when a judge there was addressed as "Your Highness".

His Honour, Judge Langman, was recently faced with a similar problem at the Bromsgrove County Court when a witness, who was told to tell the court what had happened in his own words, cleared his throat, squared his shoulders, and began "Gentlemen". His Honour smiled—"We are not a jury," he said, "Try again." The witness then started off with "Your Worship". The judge shook his head. "Wrong again," he said, "but never mind, cut out the frills, and get on."

Bromsgrove.

W. H. SCOTT & SON.

4th January.

Cancer Research.

Sir,—You will be as conscious as I am myself of the longing we now hear expressed from all sides, to set a term to preventable human suffering. I write you, indeed, because the consciousness of it weighs upon me. There are still causes of suffering that even in peace time we cannot yet prevent, though we may take every effort to do so; and among them all cancer strikes the public imagination with the deepest sense of apprehension. The members of my profession will know how frequently the British Empire Cancer Campaign has appeared among the beneficiaries from charitable bequests; and I may perhaps take this opportunity of thanking personally those who have, as occasion offered, directed the attention of their clients to the nature of our work. When I remember the increasing support we have had from such donations, I am convinced that the public is grateful to learn how they can thus play their part in the long struggle against disease and death.

Our research workers in the Empire and beyond it are, I am told, preparing to concentrate all the powers of human science upon this perplexing problem. That the powers we may harness are enormous, who can now doubt? We shall have hopeful news from time to time; and we shall still have our set-backs. But none of us would dare to predict how soon success may come.

May I, then, once again ask you to have our work in your mind, when it falls to you to give advice upon the disposition of bequests? It is a work that links us all closely together; within it we can admit our common humanity and our common desire that it should be crowned with victory.

HAILSHAM,

Chairman, Grand Council,
British Empire Cancer Campaign.

London, S.W.1.

1st January.

REVIEW

Principles of the Law of Contracts. By the late Sir JOHN SALMOND and JAMES WILLIAMS, LL.M. (N.Z.), Ph.D. (Camb.). 1945. London: Sweet & Maxwell, Ltd. 35s. net.

The publication of a second edition of a new book on contract law by two writers of the eminence of the late Sir John Salmond (formerly a Judge of the Supreme Court of New Zealand) and Professor Williams (Challis Professor of Law and Dean of the Faculty of Law in Sydney) is a legal event of the first importance. When Sir John Salmond died in 1924 the work was far from complete, but Dr. Winfield edited the text, added some contributions of his own and brought out a first edition in 1927. In the present edition much of what is characteristically Sir John Salmond's has been retained, as Professor Williams states in his preface, but the chapters on contracts running with property and conflict of laws in relation to contracts have been omitted as being more appropriate to text-books on other subjects. We cannot help feeling that this tendency to split up the law into separate and mutually exclusive watertight compartments detracts from the value of the work. The text is full and is amply illustrated and annotated with citations of cases and judgments. We recommend for close study the sections on "Contract to make a contract," illegal and nugatory contracts, quasi-contracts and instalment contracts. It is curious that in the chapter on agency we have been unable to find anything on remuneration of the agent or on secret commissions. The reasons for omitting these topics are not obvious. A reviewer

can do little more with a volume of these dimensions than test it by use at different points, and looking up the first practical problem that presented itself after receipt of the book he was disappointed to find no reference to the fact that a written offer, orally accepted, may be a memorandum within the Statute of Frauds, or to *Reuss v. Pichsley* (1866), L.R. 1 Ex. 342, which decided this. It is not his desire to pick holes in the work of great lawyers such as the authors of this work, but he mentions this so that the authors of the next edition may increase their efforts to attain comprehensiveness on important matters of detail. There is a very capable and not unduly long account of the law of frustration with a synopsis of the main provisions of the Law Reform (Frustrated Contracts) Act, 1943. Those who seek clarity combined with reasoned conclusions and amply comprehensive references to the authorities will find all these in this admirable work.

OBITUARY

MR. E. BEECHING

Mr. Ernest Beeching, solicitor, of Messrs. Beeching & Son, solicitors, died on Tuesday, 25th December last, aged sixty-six. He was admitted in 1903.

MR. F. E. CRAIK

Mr. Thomas Edgar Craik, solicitor, and town clerk of Batley, Yorks, died recently, aged fifty-four. He was admitted in 1920.

MR. A. A. B. DEWING

Mr. Arthur Augustus Blathwayt Dewing, solicitor, of Messrs. Welchman, Dewing & Wace, solicitors, of Wisbech, died on Sunday, 23rd December, aged sixty-three. He was admitted in 1906.

MR. R. A. JOHNSON

Mr. Ralph Albert Johnson, solicitor, of Messrs. Sandeman and Johnson, solicitors, of Accrington, Lancs, died on Saturday, 15th December, aged fifty-seven. He was admitted in 1922.

MR. I. C. KENSHOLE

Mr. Ivor Charles Kenshole, solicitor, of Messrs. Kenshole and John, solicitors, of Aberdare, died on Tuesday, 25th December, aged fifty-six. He was admitted in 1914.

MR. T. B. TIMMINS

Mr. Thomas Buckley Timmins, solicitor, of Messrs. Timmins and Timmins, solicitors, of Bath, died on Monday, 24th December, aged sixty-five. He was admitted in 1902.

MR. C. E. WHITE

Mr. Charles Edward White, solicitor, of Clacton-on-Sea, Essex, died on Thursday, 20th December, aged eighty. He was admitted in 1888.

MR. R. W. YOUNG

Mr. Robert William Young, solicitor, of Messrs. Alms & Young, solicitors, of Taunton, died recently, aged fifty-one. He was admitted in 1914.

COMMERCIAL AND BUSINESS CORRESPONDENCE
WITH AUSTRIA

The Board of Trade announce that by arrangement with the Postmaster-General they have made a general Licence [S.R. and O., 1945, No. 1601] authorising business communication with Austria. On and from the 2nd January, 1946, British firms and firms in Austria may exchange business information with a view to the future resumption of business relationships. Banks and other financial institutions may now reply to requests for information from their depositors in Austria. Documents such as birth, death, marriage certificates and wills may be transmitted. The despatch of powers of attorney and proxies is subject to the normal procedure under the Defence (Finance) Regulations.

The resumption of private trade is not yet permissible and Austrian owned property in the United Kingdom continues to be under the control of the Trading with the Enemy Department and the Custodians of Enemy Property.

Applications and inquiries by persons in the United Kingdom about British property in Austria should be addressed to the Trading with the Enemy Department, 24, Kingsway, London, W.C.2.

Correspondence for Austria may not yet be registered or insured. Only non-illustrated postcards and letters not exceeding 1 ounce in weight are permitted. Rates of postage are as follows:—

Letters (1 oz.) Airmail, 5d.; Surface route, 3d.

Postcards: Airmail, 2½d.; Surface route, 2d.

No money order or parcel post service is available. Persons who desire further information regarding business correspondence should apply to the Trading with the Enemy Department, 24, Kingsway, London, W.C.2.

NOTES OF CASES

APPEAL FROM COUNTY COURT

Benninga (Mitcham), Ltd. v. Bigstra

Scott, MacKinnon and Morton, L.J.J. 3rd July, 1945

Landlord and tenant—Rent restrictions—Engaged in whole-time employment—Date as at which question must be determined—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 Geo. 5, c. 32), Sched. I, para. (g).

Defendant's appeal from a judgment of the learned judge sitting at Croydon County Court on 2nd May, 1945, whereby the defendant was ordered to give up possession to the plaintiffs of the house No. 27, Mortimer Road, Mitcham, on 20th June, 1945.

The plaintiffs owned a margarine factory and the defendant was their chief engineer. Up to February, 1941, he had lived in a house adjoining the factory in Mitcham, but he then moved further away. The plaintiffs found this inconvenient, and bought 27, Mortimer Road, a house which was close to their factory. The defendant went into occupation, paying the plaintiffs 10s. a week rent, and was given a rent-book. On 13th December, 1944, the plaintiffs dismissed the defendant, the necessary permission under the Essential Works Order having been obtained. The defendant continued to occupy 27, Mortimer Road, paying the same rent, until in February, 1945, the plaintiffs secured the services of a new engineer, and on 13th February, 1945, they served notice to quit on the defendant. The new engineer commenced work with the plaintiffs on 16th April, 1945. The plaintiffs commenced these proceedings in the county court on 20th March, 1945, on the grounds that they reasonably required the house for occupation by a person engaged in their whole-time employment and that the house had been let to the defendant in consequence of his employment with the plaintiffs and that he had ceased to be in their employment. The defendant was not called to give evidence, and the learned county court judge made the order for possession as stated.

MACKINNON, L.J., said that the acceptance of rent by the plaintiffs after the service of notice to quit clearly created no new tenancy, and as s. 16 (3) of the Rent and Mortgage Interest Restrictions Act, 1920, said, the payment was only to be treated as mesne profits. *Read v. Gordon* [1941] 1 K.B. 495, was a totally different case, in which the employers, having given up business, allowed an employee to stay in occupation for some six or seven years at the old rent. His lordship then referred to the words "some person engaged in his whole-time employment," and cited *R. v. Rogers* [1918] W.N. 128, and *Spencer v. Fox* [1922] W.N. 141. His lordship said that the word "engaged" was deplorably ambiguous. In fact "engage," of a master, had an entirely different meaning to "engaged in" of a workman. The material date for consideration whether the new engineer was "engaged in the whole-time employment" of the plaintiffs was not 20th March, 1945, the date of the plaint, but 2nd May, 1945, the date of the hearing. The Rent and Mortgage Interest (Restrictions) Acts prohibited the granting of certain relief unless certain conditions had been fulfilled, and the question whether those conditions existed had to be determined at the hearing. In *Read v. Gordon*, *supra*, the crucial time for deciding the question then in issue was the date of the notice to quit. In that case it was necessary to consider what was the nature of the defendant's tenancy when the plaintiffs' common law claim to possession arose, namely, when they served the notice to quit, and it provided no support whatever for the defendant's case. The appeal would be dismissed with costs.

SCOTT, L.J., agreed, and MORTON, L.J., delivered judgment to the like effect.

COUNSEL: Eddy, K.C., and Guy Willett; John Busse.

SOLICITORS: Churchill, Clapham & Co.; Bulcraig & Davis.

[Reported by MAURICE SUARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Squire's Settlement

Evershed, J. 11th December, 1945

Trust—Public Trustee—Appointed Custodian Trustee—Desire to appoint Public Trustee sole managing trustee—Procedure—Public Trustee Act, 1906 (6 Edw. 7, c. 53), s. 4 (2) (i).

Originating motion.

By a settlement made in 1902 S vested certain property in two trustees upon trust for himself and his wife successively for life, with ultimate trusts in favour of their issue. The power to appoint new trustees was given to S and his wife. In 1912 one of the trustees died, and by a deed dated the 27th January, 1913, S and his wife, in exercise of their power, appointed the Public Trustee to be custodian trustee of the settlement. The surviving trustee died in 1943 and S and his wife then desired to appoint the Public Trustee to be sole managing ordinary trustee of the

settlement. It was thought that the Public Trustee could not at the same time be both custodian trustee and managing trustee of the settlement having regard to the decision of the Court of Appeal in *Forster v. Williams Deacon's Bank, Ltd.* [1935] Ch. 359 and that of Farwell, J., in *Arning v. James* [1936] Ch. 158. Accordingly, S and his wife applied by summons under s. 4 (2) (i) of the Public Trustee Act, 1906, for an order terminating the custodian trusteeship. The children of the marriage agreed to the application. When the matter first came before Evershed, J., on summons, he held that he had no jurisdiction to deal with the matter. The application was then renewed by originating motion.

EVERSHED, J., said that the conditions indicated in s. 4 (2) (i) were satisfied, it being the intention of the applicants to appoint the Public Trustee as an ordinary trustee. Paragraph (i) provided that the court might make an order, but there was nothing in the Act or rules made thereunder as to how an order could be obtained. He therefore had no power, either in chambers or in court, to make the order on summons. The proper procedure was by originating motion. He was satisfied the court ought to make an order. The applicants undertook to appoint the Public Trustee as ordinary trustee. The trust property would not be divested out of him and no vesting order would be necessary. When he became ordinary trustee, the Public Trustee would be able to exercise his usual functions with regard to it. Order as asked by the motion.

COUNSEL: H. Rose.

SOLICITORS: Morgan and Harrison.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Ocean Steamship Co., Ltd. v. Liverpool & London War Risks Insurance Association, Ltd.

Atkinson, J. 16th November, 1945

Insurance (marine)—War risks—Warlike operation—Deck cargo carried and speed maintained in heavy weather owing to military necessity—Resulting damage to ship—Whether consequence of warlike operation.

Action tried by Atkinson, J.

By a policy of marine insurance the plaintiffs insured their motor vessel "Priam" with the defendants, from 30th June to 29th December, 1942, against King's enemies' risks and war risks, including the consequences of warlike operations by or against the King's enemies. The vessel, being requisitioned by the Crown, was directed to sail from Liverpool to Alexandria with a cargo of high military importance. The prescribed route lay north of Ireland, west of the Azores and round the Cape. The amount of cargo to be carried was so great that the master permitted part of it to be carried on the foredeck solely on the ground of the military urgency, for he disapproved on principle of deck cargoes on winter voyages across the Atlantic Ocean. The ship encountered very heavy weather in the Atlantic between 7th and 13th December. The deck cargo had been properly made fast, but the heavy seas struck the cases and caused them to collapse in part, and a heavy tank bridge-layer slipped its lashings and was adrift on the starboard side of the deck. The movement of the cargo caused extensive damage to the hatch-covers and 800 tons of water entered the front hold. Repairs were effected and the cargo made fast again, but further heavy weather was encountered, the deck cargo again broke loose, damaging the hatch-covers, and a further 1,400 tons of water were shipped. The flooding of the hold caused ten of the contact fuses forming part of the cargo to explode, which damaged the hull. Throughout the heavy weather, while that damage was occurring, the master maintained full speed on the ground of the military urgency of the cargo, instead of heaving to or running before the wind as he would otherwise have done. Atkinson, J., found as a fact that the damage would not have occurred but for the stripping away of the hatch-covers by the loose deck cargo, and that, the ship being down by the head owing to the water which she had shipped, the master would not have forced her ahead through the heavy weather but for military necessity. The damage thus caused to the ship amounted to £1,632 10s. 10d., for which sum the shipowners now sued the underwriters.

ATKINSON, J., said that the damage in question would, no doubt, have been covered by a policy against perils of the sea without any relevant exception. The sea did the damage, and the fact that it had done so because of the exceptional circumstance of the destruction of the hatch-covers would not prevent the loss from being due to a sea peril: see *Hamilton, Fraser & Co. v. Pandorf & Co.* (1887), 12 App. Cas. 518, where a cargo was damaged by an escape of sea-water from a pipe on board the ship which had been gnawed through by rats. The question still remained, however, whether this damage had been caused by a

peril of the sea in consequence of a warlike operation: see *per Lord Wright in Yorkshire Dale Steamship Co., Ltd. v. Minister of War Transport* [1942] A.C. 691, at p. 707; 86 SOL. J. 359. The shipowners argued (a) that damage caused to a ship by weather while engaged on a warlike operation was a consequence of that operation even though its character had nothing to do with the damage suffered; and (b) that the nature of this particular operation created additional perils which were the effective cause of the damage. As to the first submission, the provisional view expressed by Lord Wright in that case and the strong view expressed by MacKinnon, L.J., in the Court of Appeal [1942] 2 K.B. 35, at p. 46; 86 SOL. J. 359, supported him (Atkinson, J.) in his view that there was a clear distinction between a loss caused by a collision or a dry stranding and one caused by heavy weather, which latter was due to something done to, not by, a ship while carrying out the operation. The shipowners succeeded, however, on their second contention. He was satisfied that the damage would not have occurred, though caused by the sea, had the voyage not been a warlike operation, that was, but for the necessity of carrying a heavy deck cargo across the Atlantic in winter and for that of maintaining speed in spite of the heavy weather and damaged hatch-covers. *Reischer v. Borwick* [1894] 2 Q.B. 548, was very close to the present case. The tank bridge-layer had made the hole through which the water reached the hold and was therefore the proximate cause of the damage claimed for. The high seas would otherwise have been innocuous. The open hold was a continuing source of danger and was solely due to the war risk constituted by the carrying of the heavy deck cargo. It was the predominating and effective peril, and was aggravated by the necessity for maintaining speed when the vessel was already down by the head. The shipowners were accordingly entitled to recover.

COUNSEL: *Bateson, K.C.*, and *A. J. Hodgson*; *Sellers, K.C.*, and *Devlin, K.C.*

SOLICITORS: *Bentleys, Stokes & Lowless*, for *Alsop, Stevens and Collins Robinson*, Liverpool; *Hill, Dickinson & Co.*
[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

THE WORSHIPFUL COMPANY OF THE SOLICITORS OF THE CITY OF LONDON

CELEBRATION BANQUET

(Concluded from p. 8)

THE LORD CHANCELLOR, in responding for the bench, said that he appeared in the case before them for the defendant with his learned friend, Sir Walter Monckton. If they, as he, had often wondered what was the good of a junior they were going to learn to-night as he was going to leave the labouring oar to him. Those of them who took the judicial oath swore that they would hear and determine according to law, and he believed he could say of all his brethren on the bench that they were doing their best to hear and determine according to law. It had been said in times past that judges sometimes could not determine, could not make up their minds; it had even been said that sometimes judges could not hear; and it used to be said that, even if judges both heard and determined, they failed to do so according to law. He was sure no one would say that of the bench to-day. He suffered from the fact (and he would be quite candid about it) that the judges stood in such high repute that in every sort of inquiry everybody wanted a judge to preside. In the days of the war, the names of Uthwatt, Scott, and many others were household names. Since the war, in a dispute in the cotton industry, a judge was wanted: they wanted a judge in the dock industry; and they wanted a judge in the Palestine controversy. He had to balance these claims, all very important claims, with the paramount necessity of seeing that the work of the courts was carried on. But it was a tribute to the status and position of the judges that they were wanted for all these purposes. The judges, to the best of their ability, would satisfy all the demands made upon them. They who had to sit and determine cases were conscious that they had a great responsibility. Nothing could contribute more to the character of their people than the fearless, impartial and incorrupt administration of justice. Of all the tasks that any Minister of the Crown had to perform, he believed he had to perform the most responsible: to suggest to His Majesty the names of those people who should sit in the various divisions of the courts. He could only tell them this. If he failed in everything else, he hoped he would not fail in that, and that they would be able, so long as he was in any way responsible for it, to keep up the great tradition which had been handed down to them.

Sir WALTER MONCKTON, K.C., in responding for the Bar, said that it was once again a great pleasure to be "led" by the Lord Chancellor, and also to remember that it was always the rule of the Bar that, if the House or the court was with one's leader, the less one said the better. But, speaking for the Bar, there were one or two things he would like to add. He remembered Sir Alan Herbert, at Oxford, saying: "They tell you that the sun never sets on the British Empire. I will tell you why the sun never sets on the British Empire. It is so that the likes of you and me shall work day and night." It

was that type of oratory which resulted in Sir Alan getting a First, while he only got a Second. He would like to say how grateful he was to the Worshipful Company of Solicitors for reappointing him their honorary counsel and regarding his long tenure of Law Officer as a temporary aberration. He was not quite satisfied with Sir Alan's description of him as Marco Polo, because to be always "elsewhere" was hardly a recommendation to the Worshipful Company of Solicitors. Whatever their politics were, they wanted to see restored once more those gracious elegancies and charms of life in the City of London which the great City Companies had so long exemplified and offered to others in their hospitality. In the association of the two great professions of the law on such occasions as these they had that laughter and love of friends which made their common toil and daily task a thing of pleasure and gave a zest to life. He thanked them very much on behalf of the Bar in letting them share in that great entertainment.

Sir GERALD DODSON (Recorder of London) proposed the toast of "The Company." The remarkable feature about the Solicitors' Company was that it really was a company of solicitors, and a very flourishing company, despite the fact that up to the moment it had not participated in or been threatened by the alleged glories of nationalisation. He could not help thinking that the invitation extended to the Lord Chancellor was a measure of insurance. But what the future held, of course was quite unknown. The very entry to their great profession, for all they knew, might very shortly be put on "points" like buying tins of salmon. But he supposed there would always be recruits coming in, which, in itself, was rather remarkable, because nobody could suggest that their profession was very popular. Nobody really loved a lawyer. People sometimes talked about their doctor and became almost lyrical about him, but did one ever hear a client say of his solicitor: "Ah! he wrote that fellow a splendid letter, a regular 3s. 6d. one!" No such appreciation was really ever forthcoming. But, whatever changes there might be, he hoped they would not be very drastic, because continuity upon the right lines in their profession was of vital importance. Let them look back upon that glorious spectacle of the past, forty years back, of the senior partner in spats and silk hat! What a splendid spectacle he was, leaning perhaps for his law a little bit upon that remarkable figure, the managing clerk, but, nevertheless, with a wonderful knowledge certainly of the principles of the common law. The common law was very important. Just think of what was happening at Nuremberg. Whatever was happening there was being hammered out of the common law, for robbery with violence was known to the common law long before it was put into the strait jacket of a statute. The managing clerk was the wizard of the White Book, that abominable contrivance designed to be read to those about to depart this life in order to cheer them up and show them that life held something even worse than death. Then there was that doughty figure, the office boy, and what a real little champion he was forty years ago. One could see him wrestling at the close of the day with a large instrument which looked like a gigantic thumbscrew. It was the letter press, and he was half covered with that obnoxious fluid known as copying ink. He was smothered with ink, and in fact looked more like a Chancery barrister than anything else. He would conclude by saying, with all diffidence, to each one of them that, without their assistance, the administration of justice in Britain could never have attained to the high efficiency it had.

THE MASTER (Mr. H. A. Easton, C.C.), in responding, said he was very proud to be in the position he was that evening and was also very proud to be a member of the solicitors' profession. None of the professions engaged in civil occupations before the war had a finer record in the war than their profession, either in the casualties they had unfortunately sustained, in the volunteers who came forward, or in the decorations awarded. It was a very great pleasure for him to see around him so many men who had performed such fine services in the war. The casualties they had suffered were very heavy indeed: he trusted that they would not be in vain, as were those in the 1914-1918 war. While deeply mourning those who had fallen, he wished to extend a cordial welcome to those there who had successfully emerged from a terrible war. There were many whose gallantry would go down to history. One claim he had to make on behalf of their profession was that, with the exception of the clergy, they were the poorest profession in the United Kingdom. Since 1888, their charges had only been increased by 50 per cent., while the cost of living since then had gone up at least 300 per cent., and their overhead charges a little more. In the Report of the Government Committee on Legal Aid, it was a curious thing that, in the definition of a person entitled to legal aid, his income exceeded that of the average solicitor who had to come to his aid. Before sitting down, he must pay a compliment to their esteemed Clerk who had rendered wonderful service to the Company. The arranging of the banquet had all fallen on him and he had done a wonderful job of work. He thanked him very gratefully, and he thanked the Company for the reception they had given to the toast.

During 1945 the Legal & General Assurance Society, Ltd., issued a total of 9,181 new policies for net sums assured of £10,645,037. The corresponding total net figures for 1944 were 8,347 policies for sums assured of £11,096,524. These figures do not include any capitalisation for deferred annuities. With regard to immediate annuities there were 879 bonds for £1,192,405 consideration money. The corresponding figures for 1944 were 507 bonds for £772,579 consideration money.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1945

- No. 1636. **Commissioners of Works Act, 1852 (Amendment)** Order in Council. Dec. 20.
- No. 1603. **County Court Districts (Lampeter & Aberayron)** Order. Dec. 14.
- No. 1631. **Currency (Defence)** Order in Council. Dec. 20.
- No. 1602. **Customs. Export of Goods (Control) (No. 8) Order.** Dec. 20.
- No. 1575. **Customs. Import of Goods (Control) (No. 2) Order.** Dec. 14.
- E.P. 1612. **Defence Order in Council, Dec. 20, revoking and amending certain Defence Regulations. (Defence (General) Regulations, 1939, Nos. 8, 10, 11, 11A, 14, 18BA, 20A, 47BA, 58AC, 84B, and Regulation 5 of the Defence (Functions of Ministers) Regulations, 1941).**
- No. 1633. **Defence Order in Council, Dec. 20, revoking the Order in Council dated Nov. 16, 1945, amending Regulations 42CA of the Defence (General) Regulations, 1939.**
- E.P. 1614. **Defence (Services for Industry) Regulations, Order in Council. Dec. 20.**
- No. 1558. **Disabled Persons (General) Regulations. Dec. 18.**
- E.P. 1632. **Guernsey. Emergency Powers (Guernsey) (No. 2) Order in Council. Dec. 20.**
- E.P. 1663. **Location of Retail Business Order. Dec. 22.**
- No. 1650. **National Fire Service. (Preservation of Pensions) (Act of 1925) Regulations. Dec. 20.**
- No. 1649. **National Fire Service. (Preservation of Pensions) (Police Firemen) (No. 2) Regulations. Dec. 20.**
- No. 1644. **National Health Insurance (Emergency Additional Benefits) Amendment Regulations. Dec. 3.**
- E.P. 1598. **Police. Admiralty Civil Police and Royal Marine Police Special Reserve (Employment and Offences) Order, 1944. (Revocation) Order. Dec. 18.**
- No. 1651. **Police, England and Wales, Regulations. Dec. 21.**
- No. 1652. **Police, England and Wales (Women), Regulations. Dec. 21.**
- E.P. 1653. **Police, War Reserve (No. 2) Rules. Dec. 21.**
- E.P. 1654. **Police, Women's Auxiliary Police Corps (No. 2) Rules. Dec. 21.**
- E.P. 1542. **Railways (Notice of Accidents) Modification (Revocation) Order. Dec. 14.**
- No. 1543. **Railways (Notice of Accidents) Order. Dec. 14.**
- E.P. 1585. **Regulation of Traffic (Regulated Areas Nos. 7, 8, 9 and 10) (Revocation) Order. Dec. 19.**
- E.P. 1586. **Regulation of Traffic (Western and North Western Scotland) (Revocation) Order. Dec. 19.**
- No. 1581. **Safeguarding of Industries (Exemption) (No. 2) Order. Dec. 20.**
- No. 1664. **Savings Banks (Limits of Annual and Aggregate Deposits) Order. Dec. 31.**
- No. 1588. **Spirits. Manufacture of Spirits Regulations. Dec. 20.**
- No. 1613. **Supplies and Services (Transitional Powers). The Defence (Price Control) Regulations, 1945, Order in Council, Dec. 20.**
- No. 1611. **Supplies and Services (Transitional Powers). Order in Council, Dec. 20, adding Regulation 55AB to the Defence (General) Regulations, 1939, and amending Regulation 55 of those Regulations.**
- Nos. 1615 to 1630. **Supplies and Services (Transitional Powers). Orders in Council, Dec. 20, directing that Defence Regulations shall have effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945. 1615. Defence Regulations relating to Shipping. 1616. Defence Regulations relating to Requisitioning and Similar Powers. 1617. Defence Regulations relating to Mines and Quarries. 1618. Defence Regulations relating to the Control of Industry. 1619. Defence Regulations relating to Control of Building Operations, etc. 1620. Defence Regulations relating to the Control of Employment and Conditions of Employment. 1621. Defence Regulations relating to Agriculture and Fisheries. 1622. Defence Regulations relating to Housing. 1623. Defence Regulations relating to the Control of Transport. 1624. Defence Regulations relating to Miscellaneous Matters. 1625. Defence Regulations relating to General Matters. 1626. Defence (Bodies Corporate and Trade Union) Regulations, 1940. 1627. Defence (Encouragement of Exports) Regulations, 1940.**

1628. Defence (Finance) Regulations, 1939. 1629/S. 64. Defence (Local Government) (Scotland) Regulations, 1939. 1630. Defence (Recovery of Fines) Regulations, 1942, and the Defence (Recovery of Fines) (Scotland) Regulations, 1942.

No. 1601. **Trading with the Enemy.** Austria. General Licence. Dec. 27.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

RULES AND ORDERS

S.R. & O., 1945, No. 1666.

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES.

COMPULSORY PURCHASE.

THE TOWN AND COUNTRY PLANNING ACT, 1944, COMPULSORY PURCHASE (APPOINTED DAY) ORDER, 1945, DATED DECEMBER 28, 1945, MADE BY THE MINISTER OF TOWN AND COUNTRY PLANNING UNDER SECTION 1 (1) OF THE TOWN AND COUNTRY PLANNING ACT, 1944 (7 & 8 Geo. 6, c. 47).

The Minister of Town and Country Planning in exercise of the powers conferred upon him by subsection (1) of Section 1 of the Town and Country Planning Act, 1944, hereby orders and appoints the 1st day of January, one thousand nine hundred and forty-six to be the date on which it has become practicable for a local planning authority to make an application to him for a Declaratory Order for the purposes of the said Section 1.

Given under the Official Seal of the Minister of Town and Country Planning this twenty-eighth day of December, One thousand nine hundred and forty-five.

(L.S.)

Geoffrey Whishard,
Secretary,

Ministry of Town and Country Planning.

NOTES AND NEWS

Honours and Appointments

Lord Russell of Killowen has retired from the office of Lord of Appeal in Ordinary, and the King has approved the appointment of Mr. Justice UTHWATT in his place. The King has also approved the appointment of Mr. RONALD FRANCIS ROXBURGH, K.C., to succeed Mr. Justice Uthwatt as a Judge of the High Court of Justice, Chancery Division.

The Lord Chancellor has appointed Mr. JOHN CRICHTON PARRY DE WINTON to be the Registrar of the Brecknock, Builth and Hay County Courts and District Registrar in the District Registry of the High Court of Justice in Builth as from the 1st January, 1946, *vice* Mr. George Tudor, who died on the 1st December, 1945. Mr. HORACE ANDRE VISICK has been appointed Registrar of the Truro and Falmouth, St. Austell and Redruth County Courts and District Registrar in the District Registry of the High Court of Justice in Truro, as from the 1st January, 1946, *vice* Mr. H. T. Chilcott, who retired on the 31st December, 1945. The Lord Chancellor has appointed Mr. B. O. L. PRIOR to be the Liabilities Adjustment Officer at Norwich, as from the 1st January, 1946, *vice* Mr. C. B. L. Prior, who has resigned.

Mr. ERIC E. STAMMERS has been appointed Registrar of the Mayor's and City of London Court from 1st January last, on the retirement of Mr. Wilfred Dell.

Mr. T. T. CROPPER, solicitor, of Maidstone, has been appointed Clerk to the Dudley Magistrates. He was admitted in 1931.

Professional Announcement

As from 1st January last Mr. G. C. LOWE, of Messrs. Goodger and Lowe, Solicitors, 2, Lichfield Street, Burton-on-Trent, Staffs, has taken into partnership L.A.-Col. WILLIAM BAGNALL, O.B.E., and from that date the practice will be carried on under the name of "GOODGER, LOWE & BAGNALL."

Notes

There is a heavy calendar for the January Session of the Central Criminal Court, which opened last week, there being no fewer than 173 persons for trial or sentence.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held on the 2nd January, 1946, grants and annuities amounting to £4,002 3s. 4d. were made to fifty-one beneficiaries.

Colleagues of Sir Herbert Cunliffe, K.C., at Essex Quarter Sessions, have refused to accept his resignation as senior chairman of the Sessions, and ordered that application be made to the Lord Chancellor for Sir Herbert to continue in office. He is seventy-eight.

The third meeting of the Kennington Law Club was held on Friday, 14th December. Mr. J. P. Eddy, K.C., and Mr. E. V. Thompson, C.B., constituted the bench. The next meeting of the club will be a moot, and will be held on Monday, 28th January; at 7.45 p.m. All particulars are obtainable from Miss B. J. Stewart, the Hon. Secretary, at Kennington L.C.C. Institute, S.E.11.

NEW YEAR LEGAL HONOURS.

An eminent solicitor whose name appeared in the Dominions list of the New Year Honours is Mr. RALPH STUART BOND, C.B.E., senior partner in Messrs. Ralph Bond & Rutherford, solicitors, of Norfolk Street, Strand, W.C.2, who received the honour of knighthood for his services in connection with the chairmanship of the Finance Committee of the Empire Societies' War Hospitality Committee. He was admitted in 1894. Col. GILBERTSON SMITH, T.D., D.L., Chairman, Essex County Council, and senior partner in Messrs. Miller & Smiths, solicitors, Pall Mall, S.W.1, also received a knighthood for his work in connection with Civil Defence. He was admitted in 1890.

SENDING OF GIFTS ABROAD

The Treasury and the Board of Trade make the following announcement regarding the sending of gifts of money abroad. No money gifts may be sent to dest nations outside the sterling area.

Money gifts may, however, be sent to destinations in the sterling area (i.e., to the Empire, other than Canada and Newfoundland, and to Egypt, the Anglo-Egyptian Sudan, Iraq, Iceland and the Faroe Islands). They should be sent by bank transfer, or postal or money order (where the service is in operation). Bank notes should *not* be sent.

COURT PAPERS

SUPREME COURT OF JUDICATURE HILARY SITTINGS, 1946

HIGH COURT OF JUSTICE—CHANCERY DIVISION

Mr. Justice UTHWATT

Such business as may from time to time be notified
Mondays—Chambers Summonses (Group A)

GROUP A.—Mr. Justice COHEN

Mr. Justice COHEN will sit for the disposal of the Witness List.
Mondays—Bankruptcy Business.
Bankruptcy Motions will be heard on Mondays, 21st January, 11th February, 4th and 25th March.

Bankruptcy Judgment Summonses will be heard on Mondays, 28th January, 18th February, 11th March, 1st April.

A Divisional Court in Bankruptcy will sit on Mondays, 4th and 25th February, 18th March, 8th April.

Mr. Justice VASEY

Mondays—Companies Business.

Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.

Wednesdays—Adjourned Summonses.

Thursdays—Adjourned Summonses.

Fridays—Motions and Adjourned Summonses.

Lancashire Business will be taken on Thursdays, 24th January, 7th and 21st February, 7th and 21st March, 4th April.

GROUP B.—Mr. Justice EVERSHED

Mondays—Chambers Summonses

Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.

Wednesdays—Adjourned Summonses.

Thursdays—Adjourned Summonses.

Fridays—Motions and Adjourned Summonses.

Mr. Justice ROMER

Mr. Justice ROMER will sit for the disposal of the Witness List.

COURT OF APPEAL AND HIGH COURT OF JUSTICE— CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	EMERGENCY ROTA	APPEAL COURT I.	Mr. Justice UTHWATT.
Mon., Jan. 14	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., " 15	Hay	Jones	Reader
Wed., " 16	Farr	Reader	Hay
Thurs., " 17	Blaker	Hay	Farr
Fri., " 18	Andrews	Farr	Blaker
Sat., " 19	Jones	Blaker	Andrews

GROUP A.

Date.	Mr. Justice COHEN.	Mr. Justice VASEY.	Mr. Justice EVERSHED.	Mr. Justice ROMER.
	Witness.	Non-Witness.	Non-Witness.	Witness.
Mon., Jan. 14	Mr. Farr	Mr. Blaker	Mr. Hay	Mr. Reader
Tues., " 15	Blaker	Andrews	Farr	Hay
Wed., " 16	Andrews	Jones	Blaker	Farr
Thurs., " 17	Jones	Reader	Andrews	Blaker
Fri., " 18	Reader	Hay	Jones	Andrews
Sat., " 19	Hay	Farr	Reader	Jones

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Jan. 7 1946	Flat Interest Yield	† Approxi- mate Yield with redemption
British Government Securities				
Consols 4%, 1957 or after	FA	109½	£ s. d. 3 13 1	£ s. d. 2 19 6
Consols 2½%	JAJO	92	2 14 4	—
War Loan 3% 1955-59	AO	103	2 18 3	2 12 6
War Loan 3½% 1952 or after	JD	104	3 7 4	2 17 3
Funding 4% Loan 1960-90	MN	113½	3 10 6	2 16 6
Funding 3% Loan 1959-69	AO	102	2 18 10	2 16 4
Funding 2½% Loan 1952-57	JD	101½	2 14 2	2 10 9
Funding 2½% Loan 1956-61	AO	99	2 10 6	2 11 8
Victory 4% Loan Av. life 18 years	MS	114	3 10 2	2 19 8
Conversion 3½% Loan 1961 or after	AO	107	3 5 5	2 18 3
National Defence Loan 3% 1954-58	JJ	102½	2 18 6	2 12 11
National War Bonds 2½% 1952-54	MS	101½	2 9 3	2 5 3
Savings Bonds 3% 1955-65	FA	102½	2 18 4	2 13 7
Savings Bonds 3% 1960-70	MS	102	2 18 10	2 16 8
Local Loans 3% Stock	JAJO	98	3 1 3	—
Bank Stock	AO	400½	2 19 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	98½	3 0 11	—
Guaranteed 2½% Stock (Irish Land Act 1903)	JJ	95½	2 17 7	—
Redemption 3% 1986-96	AO	102½	2 18 4	2 17 8
Sudan 4½% 1939-73 Av. life 16 years	FA	116	3 17 7	3 4 1
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	1 17 0
Tanganyika 4% Guaranteed 1951-71	FA	105	3 16 2	2 18 2
Lon. Elec. T.F. Corp. 2½% 1950-55	FA	97½	2 11 3	2 16 1
Colonial Securities				
*Australia (Commonw'h) 4% 1955-70	JJ	107	3 14 9	3 3 5
Australia (Commonw'h) 3½% 1964-74	JJ	101	3 4 4	3 3 6
Australia (Commonw'h) 3% 1955-58	AO	100	3 0 0	3 0 0
*Nigeria 4% 1963	AO	114	3 10 2	2 19 8
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 4 7
Southern Rhodesia 3½% 1961-66	JJ	106	3 6 0	3 0 0
Trinidad 3% 1965-70	AO	100	3 0 0	3 0 0
Corporation Stocks				
*Birmingham 3%, 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	100½	2 19 8	—
*Leeds 3½% 1958-62	JJ	102½	3 3 5	2 19 11
*Liverpool 3% 1954-64	MN	101	2 19 5	2 17 4
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	105½	3 6 4	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	98	3 1 3	—
*London County 3½% 1954-59	FA	104½	3 7 0	2 17 10
Manchester 3% 1941 or after	FA	97½	3 1 6	—
*Manchester 3% 1958-63	AO	101	2 19 5	2 18 2
Met. Water Board 3% "A" 1963-2003	AO	99	3 0 7	3 1 0
*Do. do. 3% "B" 1934-2003	MS	99½	3 0 4	3 0 9
*Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex C.C. 3% 1961-66	MS	100½	2 19 8	2 19 2
*Newcastle 3% Consolidated 1957	MS	101	2 19 5	2 18 0
Nottingham 3% Irredeemable	MN	98	3 1 3	—
Sheffield Corporation 3½% 1968	JJ	106	3 6 0	3 2 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	106½	3 15 1	—
Gt. Western Rly. 4½% Debenture	JJ	114	3 18 11	—
Gt. Western Rly. 5% Debenture	JJ	125	4 0 0	—
Gt. Western Rly. 5% Rent Charge	FA	121½	4 2 4	—
Gt. Western Rly. 5% Cons. Gt. Teed.	MA	118½	4 4 5	—
Gt. Western Rly. 5% Preference	MA	111½	4 9 8	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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